



Agenda Date: 9/13/04
Agenda Item: IVC

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

ILW CENTER ASSOCIATES, L.P.,
Petitioner

v.

VERIZON NEW JERSEY INC.,
Respondent

DECISION AND ORDER

BPU DOCKET NO. TC03010002
OAL DOCKET NO. PUC 1342-03

(SERVICE LIST ATTACHED)

BY THE BOARD:

This matter involves a dispute pertaining to the costs associated with the relocation of a certain pole and facilities attached thereto owned and maintained by the Respondent, Verizon New Jersey Inc. and located on real property owned by the Petitioner, ILW Center Associates, L.P. After its transfer from the Superior Court to the Board of Public Utilities (Board), this matter was transmitted to the Office of Administrative Law on January 31, 2003, for hearing as a contested case.

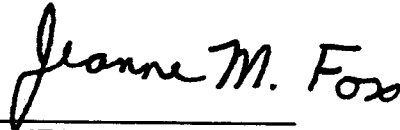
On August 17, 2004, the parties entered into and executed a Stipulation which was submitted to Administrative Law Judge Elinor R. Reiner who incorporated it into her Initial Decision, submitted to the Board on August 26, 2004, and recommended that it be adopted by the Board.

After review of the Initial Decision and the Stipulation, which are attached hereto and made a part hereof, the Board HEREBY FINDS that the terms of the Stipulation represent a fair and


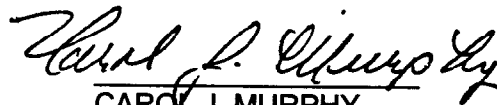
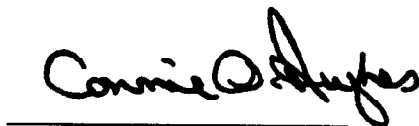
reasonable resolution of all outstanding contested issues. Accordingly, the Board HEREBY
ADOPTS the Initial Decision and Stipulation in their entirety and, as a result of the agreement of
the parties, HEREBY DISMISSES the petition in this matter with prejudice.

DATED: 9/14/04

BOARD OF PUBLIC UTILITIES
BY:



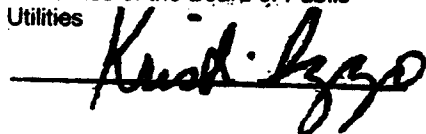
JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER
CAROL J. MURPHY
COMMISSIONER
CONNIE O. HUGHES
COMMISSIONER
JACK ALTER
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



ILW Center Associates, L.P.
v.
Verizon New Jersey Inc.
BPU DOCKET NO. TC03010002
OAL Docket No. PUC 1342-03

SERVICE LIST

Kenneth A. Porro, Esq.
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Jay L. Kooper, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CMS
RPA
BESLOW
KUZDJIAN - DAG
TELCO (2)

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 1342-03

AGENCY DKT. NO. TCO3010002

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ILW CENTER ASSOCIATES, L.P.,

Petitioner,

v.

VERIZON NEW JERSEY, INC.,

Respondent.

Kenneth A. Porro, Esq., for petitioner
(K. Porro & Associates, P.C.)

Jay L. Kooper, Esq., for respondent
(Wilentz, Goldman & Spitzer, P.A.)

Record Closed: August 19, 2004

Decided: August 25, 2004

BEFORE **ELINOR R. REINER, ALJ:**

STATEMENT OF THE CASE

On or about August 16, 2002, petitioner filed a complaint in Superior Court in regard to the fairness and reasonableness of the cost of performing a pole relocation. On August 30, 2002, in response to an Order to Show Cause filed by petitioner, the

Honorable Thomas F. Brogan, J.S.C. denied petitioner's motion and transferred the matter to the Board of Public Utilities for hearing and determination as to the fairness and reasonableness of the cost of performing the pole relocation. On January 31, 2003, this matter was transmitted to the Office of Administrative Law by the Board of Utilities as a contested case, for hearing pursuant to *N.J.S.A. 52:14B-1 to -15* and *N.J.S.A. 14F-1 to-13*.

The matter was assigned to the undersigned judge on February 28, 2003, and a telephone pre-hearing conference scheduled for April 8, 2003. The pre-hearing conference was held on that date, at which time the issues were isolated, and a hearing scheduled for January 13 and 14, 2004. At the request of counsel for respondent, the hearing was adjourned to July 28, 2004 and August 3, 2004. Thereafter, the hearing scheduled for July 28, 2004 was adjourned at the parties' request due to settlement negotiations and August 3, 2004 was converted into a settlement conference. As a result of settlement conferences held between the parties, a settlement was reached.

The parties have agreed to settle this matter and have prepared the attached Stipulation of Dismissal and Stipulation and Settlement Agreement, indicating the terms of settlement.

I have reviewed the record and the settlement terms and **FIND:**

- (1) The parties have voluntarily agreed to the settlement, as evidenced by their signatures or their representatives' signatures.
- (2) The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of *N.J.A.C. 1:1-19.1* and that the settlement should be approved. I approve the settlement and, therefore, **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

August 25, 2004
DATE

Elinor R. Reiner
ELINOR R. REINER, ALJ

8-16-04
DATE

Fred Long Jr
BOARD OF PUBLIC UTILITIES

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

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ILW CENTER ASSOCIATES, L.P.
Petitioner,

v.

VERIZON NEW JERSEY INC.
Respondent.
-----X

DOCKET NO. PUCOT 01342-03N

AGENCY REF. NO. TC03030002

SUPERIOR COURT DOCKET NO.
PAS-L-4306-02

STIPULATION OF DISMISSAL
WITH PREJUDICE

TO: The Honorable Elinor R. Reiner
Administrative Law Judge
Office of Administrative Law
State of New Jersey
33 Washington Street
Newark, New Jersey 07102

THIS MATTER, having been amicably resolved by the parties, it is hereby stipulated and agreed that the Complaint in the above-entitled matter is dismissed with prejudice and without costs.

Dated:

K. PORRO & ASSOCIATES, P.C.

By: 

Kenneth A. Porro
Attorneys For Petitioner
ILW Center Associates, L.P.

Dated: August 17, 2004

WILENTZ, GOLDMAN & SPITZER, P.A.

By: 

Jay L. Kooper
Attorneys For Respondent
Verizon New Jersey Inc.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

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ILW CENTER ASSOCIATES, L.P.
Petitioner,

v.

VERIZON NEW JERSEY INC.
Respondent.
-----X

:
: DOCKET NO. PUCOT 01342-03N
:

: AGENCY REF. NO. TC03030002
:

: SUPERIOR COURT DOCKET NO.
: PAS-L-4306-02
:

: STIPULATION AND
: AGREEMENT
:

TO: The Honorable Elinor R. Reiner
Administrative Law Judge
Office of Administrative Law
State of New Jersey
33 Washington Street
Newark, New Jersey 07102

STIPULATION AND AGREEMENT

Petitioner ILW Center Associates, L.P. ("ILW") and Respondent Verizon New Jersey Inc. ("Verizon NJ") hereby submit this Stipulation and Agreement to the Office of Administrative Law ("OAL") in the above-referenced matter for review and adoption in accordance with the terms and conditions specified herein.

BACKGROUND

A. ILW is a corporation organized under the laws of the State of New Jersey, with a place of business located in Fairfield, New Jersey. ILW is the owner of certain real property located at 1762 Ratzer Road in Wayne, New Jersey (the "Property").

B. Verizon NJ is a corporation organized under the laws of the State of New Jersey, having its principal place of business at 540 Broad Street, Newark, New Jersey.

C. Verizon NJ owns and maintains numerous facilities attached to and running from pole #61682 located on the Property, including, but not limited to, numerous copper pairs, conduit and fiber cables that run from this pole underground to a manhole (the "Facilities").

D. On or about July 10, 2002, ILW contacted Verizon NJ as to relocation of the Facilities located on the Property. Thereafter, Verizon NJ provided ILW with an estimate of \$104,000 to relocate the Facilities.

E. Subsequently, ILW filed the present action in which it sought a determination that Verizon NJ's \$104,000 relocation charge was unreasonable. On August 26, 2002, ILW made, without prejudice, an advance payment of \$104,000 for the relocation of the Facilities.

SETTLEMENT TERMS AND CONDITIONS

In order to resolve the issues in this dispute in a fair and equitable manner and avoid further litigation; and in acknowledgement that the terms and conditions covered by this Stipulation represent a compromise between the parties, ILW and Verizon NJ stipulate and agree to the following:

1. The parties hereby authorize and instruct their respective legal counsel of record to sign a Joint Stipulation of Dismissal With Prejudice and without costs as to all claims in this

matter. The Joint Stipulation of Dismissal shall be filed with the OAL together with this Stipulation and Agreement.

2. In consideration of the dismissal of this matter with prejudice, Verizon NJ shall reduce the costs charged to ILW for the relocation of the Facilities to \$73,500. As a result, Verizon NJ shall reimburse ILW the sum of \$30,500 that shall fully satisfy any claims arising from the relocation of the Facilities. Said payment shall be made within thirty (30) days of the effective date of a final OAL order adopting this Stipulation. The parties acknowledge that this Stipulation shall be separate and apart from the pending matter involving these parties in ILW Center Associates, L.P. v. Public Service Elec. & Gas Co. et al., Superior Court of New Jersey, Docket No. PAS-L-6185-02.

3. The parties agree that the terms of this Stipulation may not be argued as binding or persuasive precedent in this or any other forum, except in any proceeding to enforce this Stipulation or the terms and conditions thereof and/or the final order adopting this Stipulation.

4. This Stipulation may not be amended in any way, or any part of its provisions waived, except by writing executed by the parties to this Stipulation. In the event the OAL or the New Jersey Board of Public Utilities ("Board") modifies any provision of this Stipulation, absent express written consent of the parties, this Stipulation shall be void and the parties shall be restored to their positions prior to the execution of the Stipulation.

5. In the event that ILW undertakes efforts to obtain a New Jersey Sales Tax credit or refund resulting from the reduction of the cost of the relocation of the Facilities to \$73,500, Verizon NJ shall represent, if asked, that: (1) ILW paid a New Jersey Sales Tax of \$5,869.43 as part of its payment of \$104,000 for the cost of the relocation of the Facilities; and (2) pursuant to this Stipulation and Agreement, Verizon NJ reduced the cost of the relocation of the Facilities to \$73,500. If required by the State of New Jersey, Verizon NJ shall execute any New Jersey

Department of the Treasury, Division of Taxation document and provide any information reasonably necessary to corroborate the Verizon NJ representations set forth in this Paragraph.

6. The parties hereby agree to be bound to this Stipulation, and they acknowledge that their counsel executing this Stipulation are authorized on their behalf to execute this Stipulation. Further, they collectively request the OAL and the Board to approve the Stipulation and adopt it as a final decision and order therefore bringing all issues discussed above to closure.

Dated:


K. PORRO & ASSOCIATES, P.C.


By: _____

Kenneth A. Porro
Attorneys For Petitioner
ILW Center Associates, L.P.

Dated: August 17, 2004

WILENTZ, GOLDMAN & SPITZER, P.A.

By: _____


Jay L. Kooper
Attorneys For Respondent
Verizon New Jersey Inc.